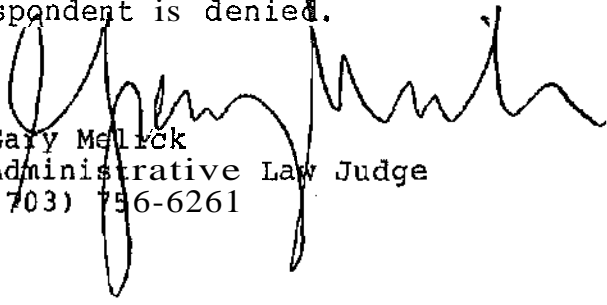


his claimed interest. If he has not been so joined the court shall that he be made a party . . . .

The Secretary opposes joinder arguing that there are no circumstances under which the exercise of his discretionary function under section 105(c)(3) can constitute discrimination under section 105(c).<sup>1</sup> Roland v. Secretary of Labor, 7 FMSHRC 630 (1985), aff'd Roland v. Federal Mine Safety and Health Review Commission et al., No. 85-1828 (10th Cir. July 14, 1986). Under the present status of law the Secretary's position must prevail. Under these decisions review of the Secretary's exercise of this function is not permitted regardless of how wrong, negligent or improperly motivated it might be. Accordingly this Commission could not in any event provide the relief sought by the Complainant against the Secretary. There is therefore no basis for the joinder of the Secretary in this proceeding. Under the circumstances the Motion for Joinder of the Secretary as a party-respondent is denied.

  
Gary Mellick  
Administrative Law Judge  
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17 Section 105(c)(3) of the Act provides in part as follows:  
"Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1).

rbg